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COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

CASE NO. INS010128

HOME PROTECTORS, INC.,

Defendant

HEARING EXAMINER'S RULING

September 4, 2001

On July 16, 2001, the Bureau of Insurance (the "Bureau") filed a Motion for Temporary Injunction ("Motion") requesting an order temporarily enjoining Home Protectors, Inc. ("Defendant") from issuing any new contracts or certificates of insurance in Virginia. In support of its Motion, the Bureau filed the affidavit of James B. Ware, a senior financial analyst for the Bureau, who conducted an investigation of the Defendant's alleged operation and determined that the Defendant appeared to be operating a home protection company without a license as required by Virginia Code § 38.2-2603.

On July 17, 2001, the Commission entered an order granting the Motion and temporarily enjoining the Defendant from issuing any new contracts or certificates of insurance for a period of ninety (90) days. Further, the Commission ordered the Defendant to file, on or before August 10, 2001, an answer responding to the allegation that Defendant is operating an unlicensed home protection company in the Commonwealth of Virginia. The Commission assigned a hearing examiner to conduct further proceedings herein and set this matter for hearing on September 25, 2001.

On August 10, 2001, Defendant, by counsel, filed an Answer and Motion to Dissolve Temporary Injunction ("Motion to Dissolve"). Defendant, in its Answer, denied the Bureau's allegations and contends that it guarantees only its own service of providing home inspections. (Answer at 2). Defendant, in its Motion to Dissolve, argues the temporary injunction should be dissolved because it was granted without providing the Defendant an opportunity to be heard as required by Section 12.1-28 of the Code of Virginia. Further, Defendant alleges the temporary injunction is inadequately supported.

On August 22, 2001, the Bureau filed a Response to Motion to Dissolve Temporary Injunction ("Response"), requesting that Defendant's Motion to Dissolve be denied. In support of its request, the Bureau argues that Defendant's contracts clearly demonstrate that Defendant was operating a home protection company without the necessary authority.

The Bureau further states that Defendant has issued the contracts to forty-six (46) Virginia residents. The Bureau cites Virginia case law¹ holding that:

When a statute empowers a court to grant injunctive relief, the party seeking an injunction is not required to establish the traditional prerequisites, i.e., irreparable harm and lack of an adequate remedy at law, before the injunction can issue.

I find that Defendant's Motion to Dissolve should be denied. The Bureau has made a *prima facie* showing that Defendant was operating a home protection company without a license. Section 12.1-28 of the Code of Virginia provides that before the Commission enters an order against any person, that person shall have reasonable notice of the time and place at which he shall be afforded an opportunity to introduce evidence and be heard. In its Order, the Commission determined that a hearing should be held as soon as possible to determine if the Defendant should be permanently enjoined. This hearing is set for September 25, 2001. Therefore, I find that Defendant has been afforded reasonable notice as required by Section 12.1-28 of the Code of Virginia. I further find the Bureau has provided sufficient grounds to support the temporary injunction. The Bureau has shown, by affidavit, that the Defendant has issued forty-six (46) contracts that are in force in Virginia. It is undisputed that Defendant is not licensed in Virginia as required by law. Finally, there is no other adequate remedy at law to address the situation. Accordingly,

IT IS DIRECTED THAT:

- (1) Defendant's Motion to Dissolve be and is hereby **DENIED**; and
- (2) The hearing on this matter set for September 25, 2001, shall commence as scheduled.

Howard P. Anderson, Jr.
Hearing Examiner

¹ *Virginia Beach S.P.C.A. v. South Hampton Roads*, 229 Va. 349, 354 (1985) (citing *Carbaugh v. Solem*, 225 Va. 310, 314-315 (1983)).